# IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

**Cr. Appeal No. 468 of 1999**

**Date of Decision**: 8.3.2006.

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State of H.P. …Appellant.

**Versus.**

Prem Singh and others .. Respondents.

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***Coram:***

***The Hon'ble Mr. Justice Deepak Gupta, Judge.***

***Whether approved for Reporting?***

**For the Appellant(s):** **Mr. J.S.Guleria, Law Officer.**

**For the Respondent(s):** **Mr. Anup Rattan, Advocate vice Mr.Ravi Bakshi Advocate.**

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**Deepak Gupta, J**. (Oral).

This appeal by the State under Section 378 Code of Criminal Procedure has been filed against the judgment of the learned Additional Chief Judicial Magistrate, Nurpur in Criminal Case No. 17-II/94 decided on 1.18.1998. The accused vide the above judgment have been acquitted of having committed the offences under Section 147, 149, 447 and 323 of the Indian Penal Code.

The prosecution case in brief is that on 8.7.1993 at about 7.45 p.m. the accused formed an unlawful assembly and came to the house of PW1 Manga Ram complainant. It is alleged that some of the accused were carrying Lathies and accused Prem Chand was armed with a sword. The accused gave beating to Manga Ram and Gulzar.

It is alleged that accused Prem Chand inflicted a sword blow on Deepa, father-in-law of Manga Ram. Manga Ram filed a complaint with the police, on the basis of which FIR No. 351/93 was registered.

The accused were summoned and charged with having committed the offences under Section 451, 323 read with Section 149 IPC to which they pleaded not guilty and claimed trial.

PW1 Manga Ram has stated that he was sitting in his house when the accused armed with Lathies came inside his house and gave beatings to him. When his father, father-in-law and mother-in-law tried to protect him then accused Prem Chand hit his father-in-law with a Kirpan (sword). He has admitted that prior to this, there was some dispute between them with regard to some money. According to this witness his two teeth were knocked out. He stated that he does not know whether Lathies and Kirpan were taken into possession by the police or not. PW2 Gulzar who is father of Manga Ram has also made a similar statement. He states that the police reached at the spot at about 9 p.m. He has admitted the suggestion that the police has not taken into possession the lathies and sword. According to him, their statements were recorded in the police station. He denied the suggestion that it was they who had attacked the accused. Deepa, father-in-law of Manga Ram also made a similar statement. It is not necessary to reproduce his entire statement. He has admitted the suggestion that the fight had taken place due to some monetary dispute. PW4 Smt. Majhi, mother-in-law of Manga Ram has also

made a similar statement. PW5 Om Prakash has stated that that he is the neighbour of PW1 Manga Ram. According to him, he heard some noise and when he came out from his house, he saw that the boundary wall had been broken which had been demolished by the accused. He also states that the accused were throwing stones at PW1 Manga Ram. He further states that one stone hit his wife also but he did not complain about it.

PW6 Dr.B.M.Gupta, has stated that he examined PW3 Deepa and found four injuries on his person and issued MLC Ex.PW6/\A. He also examined Gulzar and found three injuries on his person and issued MLC Ex.PW6/B. He also examined PW4 Majhi and found one simple injury on her person and issued MLC Ex.PW6/C. He also examined Manga and found injuries on his person and issued MLC Ex.PW6/D. He has also stated that the injuries have been caused between 2 to 4 hours prior to the examination. The only cross-examination of this witness is that these injuries may have been caused by fall. It is not necessary to refer to the statements of PW7 and PW8 who are the police officials.

PW9 Dr.D.K.Gautam, has stated that he has examined Manga Ram who was referred from C.H.C. Indora to C. H. Nurpur and found one linear cut wound on gingiva.

PW10 Chaman Singh has not supported the prosecution case. According to him, at about 8 p.m., he had only seen the fight between the accused Prem Chand, Gulzar and two ladies. According to him,

during the fight, the boundary wall fell down and then both sides threw stones on each other.

The learned trial court has let off all the accused only on the ground that sword and Lathies which the accused alleged to have used were not recovered. Assuming that the prosecution has failed to prove that the accused used lathies and sword during the fight then also from the evidence which has been discussed above, it stands proved that the fight occurred within the compound of the house of Manga Ram. It also stands proved that all the accused had entered into his house with the intention of beating up Manga Ram. When his other family members came out to his rescue, they were also beaten up by the accused. This version is supported by the statement of PW5. In fact, noting has been extracted in the cross-examination of PW1 and PW5 which would detract from their statements that the accused had beaten up PWs 1 to 4. The accused obviously trespassed into the house of Manga Ram with the intention of causing hurt to him and in fact beat up Manga Ram and his other family members i.e. PWs. 2, 3 and 4. In my view, the prosecution has proved beyond reasonable doubt that the accused have committed the offences under Section 451 and 323 IPC since they have trespassed into the house of Manga Ram with the intention of causing hurt. Since the accused had formed un-lawful assembly, all the accused are guilty under Section 149 IPC. Therefore, I have no hesitation in holding that the accused are guilty

of offences under Section 149, 447 and 323 IPC and accordingly convict them.

With regard to sentence, since the incident occurred as far back as in 1993 and more than 12 years have elapsed, I think that the purpose would be served if the accused are sentenced to pay fine instead of convicting them to suffer imprisonment for the offences committed by them. Accordingly, I sentence all the accused to pay a fine of Rs.1000/- each for the offence under Section 451IPC and for the offence under Section 323 IPC the accused are also sentenced to a pay fine of Rs.1000/-each. Resultantly, each accused is liable to pay a fine of Rs.2000/-. In default of payment of fine, the accused shall undergo simple imprisonment for three months. It is further ordered that in case the fine is deposited by the accused before the trial Court, the same shall be paid to the injured in equal share. The accused are directed to deposit the fine before the trial court within six weeks from today, failing which they shall surrender to undergo the imprisonment.

In view of the above discussion, the appeal is allowed and the judgment passed by the trial Court in Cr.Case No. 17-II/94 decided on 1.8.1998 is set aside and the accused are sentenced and convicted as aforesaid.

March 8, 2006. ( Deepak Gupta ),
s. Judge.